

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

- (1) NOT REPORTABLE
- (2) OF INTEREST TO OTHER JUDGES
- (3) NOT REVISED.

CASE NO: 86925/2016
15/2/2018

In the matter between:

LOTRIET, ANTHONIE LOWRENS

and

ROAD ACCIDENT FUND

JUDGMENT

MTATI AJ:

[1] The plaintiff, Anthonie Lowrens Lotriet is an adult male electrician who was born on [...] 1991 who sustained injuries arising out of the driving of a motor vehicle driven by Steven Prinsloo and a motor cycle bearing registration letters and numbers [...] driven by the plaintiff .

[2] The accident took place on 31 July 2015 at around 7h10 at Oswald Street in the district of Langebaan in the Western Cape. Both parties, as per agreement, consented to the separation of issues between liability and the amount of damages and the trial proceeded only on the question of Road Accident Fund's liability.

[3] The particulars of claim state that the "*...sole cause of the injuries sustained by the plaintiff was the negligence and/or wrongful act of the driver and/or owner of the insured vehicle, which negligence and/or wrongful act materialized in one or more or all of the following respects:*

6.1. *He/she/it failed to keep a proper lookout;*

6.2. *He/she/it failed to pay due regard to the rights of road users, including those of other drivers, passengers and pedestrians;*

6.3. *He/she/it failed to take reasonable steps to prevent the occurrence of harm to the plaintiff, when he/she/it was capable and obliged to do so;*

6.4. *He/she/it failed to take reasonable precautions to ensure that insured vehicle was in a proper and safe working condition in circumstances when it was foreseeable that same would be operating in circumstances where it could cause damage to others;*

6.5. *He/she/it was negligent in exercising a manoeuvre on a road without taking precautions that a reasonable person would have to have ensured that same was safe and would not endanger others;*

6.6. *He/she/it failed to give reasonable indication of the nature of the actions he/she/it was attempting;*

6.7. *He/she/it failed to apply the brakes of the insured vehicle timeously or at all;*

6.8. *He/she/it failed to avoid a collision when by the exercise of reasonable care he/she/it could and should have done so;*

6.9. *He/she/it travelled at an excessive speed having regard to the*

circumstances; and,

*6.10. He/she/it failed to observe the plaintiff's motor cycle, turned right at a time when it was unsafe to do so and collided with the plaintiff's motor cycle."*¹

[4] The plaintiff testified and his evidence can be summarised as follows: he was riding his motor cycle from his girlfriend going to work. He was following a bakkie which was also driving towards Langebaan at a speed of approximately 60 km/h. The speed limit on that route decreases from 80km/h to 60km/h as you approach Langebaan. Along the same road there is an intersection on the left hand side that is a gravel road. It is at this intersection where a Golf vehicle suddenly turned right into the gravel road and collided with plaintiff's motor cycle.

[5] The Court was referred to the photos indicating this intersection and the exact point of impact and where the vehicles were stationed immediately after the accident.

[6] During cross-examination it transpired that plaintiff had a learner's licence for the riding of the motor bike. This point was not pursued further since the riding of a motor bike whilst in possession of a learner's licence is permissible by law. It was also put to the plaintiff that the lights of his motor bike were not switched on at the time when the accident took place which was vehemently denied. I will revert to this point later when analyzing the evidence.

[7] This was the only evidence presented on behalf of the Plaintiff and the Road Accident Fund also called the insured driver to testify.

[8] Mr. Steven Prinsloo testified under oath and stated that he was driving from the direction of Langebaan and saw a vehicle in front of him which appeared to be a Toyota Fortuner with its headlights on. Immediately after this vehicle he then turned right into the gravel road and suddenly he collided with the motor bike of the plaintiff. He testified that his headlights were on and did indicate his intention of turning right. He further stated that he did not see the motor bike.

[9] On a question by Counsel for the Defendant if the headlights of the motor bike were switched on he answered in the negative and he later was confronted

¹ Para 6 of the Particulars of Claim

in cross examination how he could see if the headlights were off when his testimony was that he did not see the motor bike.

[10] It is not in dispute that when the accident took place it was in winter and it was dark. Mr. Prinsloo testified however that, whilst dark, it was a clear day and through use of headlights, a person could see clearly.

[11] The Court was not of the impression that any of the witnesses was going out of his way to provide an impressive version to the Court nor did the Court find that any one of them was untruthful. Having said that, it should be noted that the two versions cannot both be true since they are self-destructive. The Court should also be guided by the responsibility of each of the drivers. It is common cause that plaintiff was proceeding straight on the road towards Langebaan whereas Mr. Prinsloo was executing a right turn.

Issues to be determined

[12] In my view there are two issues to be determined by the Court, firstly, whether in executing the right turn on the road, sufficient precautions were taken by Mr. Prinsloo as should be expected of a reasonable person ensuring safety of other road uses and secondly, whether the actions of the plaintiff were in any way contributory to the collision.

Legal Principles and case law

[13] I have already mentioned that plaintiff was proceeding straight towards Langebaan and Mr. Prinsloo wanted to execute a right turn. It needs to be mentioned that there is ample authority relating to all drivers to keep a proper look out in all instances. For purposes of this case I will allude to instances where a driver is of intention to execute a right turn. It is so that in this matter the road on which both plaintiff and Mr. Prinsloo were driving on was a single lane for each driver and as such to execute a right turn, Mr. Prinsloo had to cross over the plaintiff's lane.

[14] In the matter of **Jacobs C and The Road Accident Fund**² the Full Court of this Division, through Msimeki J, had the following to say:

"1. Our Provincial Divisions and the Supreme Court of Appeal have held that to turn across the path of oncoming traffic in an 'inherent dangerous manoeuvre' and that a driver who intends executing such a manoeuvre bears a stringent duty to do so after satisfying himself that it is, in deed, safe and then choosing the right moment (often called the opportune moment) to do so...It is therefore understandable why a driver turning right has a greater duty towards both the traffic following as well as traffic approaching from the opposite direction.

*2. A driver turning to the right must signal his intention clearly and avoid turning until an opportune moment presents itself (See in this regard **Welf v Chrstner 1976 (2) SA 170 (N)**).*

*3. He should only turn to the right once he has satisfied himself that there is room enough between his motor vehicle and the approaching vehicles to allow him to complete the manoeuvre safely. (See **RV Court, 1945 TPD 133 at 134**).*

*4. A driver is entitled to assume that those who are travelling in the opposite direction will continue in their course and that they will not suddenly and inopportunely turn across the line of traffic. This assumption may continue until it is shown that there is a clear intention to the contrary. (See **Van Staden v Stocks, 1936 AD 18** and **Rustenburg v Otto, 1974 (2) SA 268 (C)** and **Old Mutual Fire and General Insurance Co of Rhodesia (PVT) LTD and Others v Britz and Another 1976 (2) SA 650 (RAD)**).*

*5. Drivers who see a driver signaling his intention to turn right are entitled to assume and accept that that driver will only execute his turn to the right at a safe and opportune moment. This is so because they are not obliged to guard against the unreasonable and negligent actions of a driver who signals his intention to turn to the right. In this regard Van Winsen AJA (as he then was) in the matter of **Sierborger v South African Railways & Harbours , 1961 (1) SA 498 (AD) at 504 - 505** said:*

² A402/2008 SA GNP at p22

'....the answer seems to be 'none other than keep a look-out'. There was no obligation upon him to stop or even slowdown because of having seen a signal. In parenthesis, it need scarcely be remarked, that du Preez's statement in evidence that had he seen appellant's signal he would have stopped, even supposing it to be true, cannot burden him with an obligation not imposed by Jaw.' (Emphasis included)..."

Common cause facts

[15] Without repeating what is already stated *supra* the following facts are common cause:

1. The Plaintiff was driving behind a bakkie towards Langebaan;
2. The accident took place on 31 July 2015, in winter around 7h10 and it was still dark;
3. Mr. Prinsloo wanted to execute a right turn into a gravel road

[16] Having reviewed the conspectus of evidence and the relevant authority, I am convinced that there was a larger burden on the part of Mr. Prinsloo to satisfy himself that there indeed was no obstacle in front him to execute a right turn. The available authority is clear on what was expected of him and further that there was no real obligation on the part of plaintiff to take extra care even if he saw the insured's vehicle except if there was clear indication that he was not going to stop.

[17] In the result, I make the following order:

1. The Defendant is liable for 100% of the plaintiff's proven or agreed damages;
2. The Defendant is ordered to pay plaintiff's costs on the merits; and,
3. The determination of quantum is postponed *sine die*.

MTATI AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

FOR THE PLAINTIFF: ADVOCATE: M. VAN DER BARSELAAR
INSTRUCTED BY: DE BROGLIO ATTORNEYS

FOR THE DEFENDANT: ADVOCATE M. PIENAAR
INSTRUCTED BY: MARIVATE ATTORNEYS